CF 10/

3

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

W.P. NO.3289 /2005

PETITIONERS : 1. Smt. Renuka Maity, aged about 32 Years, W/o Ravindra Maity
defendents Shop No. 3, Near Gayatri Mandir Road, Gali no. 2, opp. to Modi Ata Chhakki, Bilaspur (C.G.)

2. Jitendra Chahil aged 35 Years, S/o Lakhbir Singh Chahil, Vidya Up Nagar, Bilaspur (C.G.)

P.R. No. 3296/05
Presented by Shri Sangeeta Mishra
dated 13/12/05

VERSUS

RESPONDENT : Smt. Sangeeta Gupta
Plaintiff Aged about 45 Years,
W/o Arun Gupta, R/o R-2, Vinoba Nagar, Bilaspur (C.G.)

WRIT PETITION UNDER ARTICLE 227 OF CONSTITUTION OF INDIA

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

39

मामला क्रमांक WP 3287/05 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

27.7.2005

Shri A.V. Sridhar, counsel for the petitioner.

The petitioners have preferred this petition under Article 227 of the Constitution of India questioning the legality of order dated 24.6.2005 passed by learned 5th Civil Judge, Class-I, Bilaspur whereby learned Civil Judge has rejected the application of the petitioners filed under Section 10 of the CPC fo staying the proceedings of Civil Suit No.7A/2004 filed by the respondent herein against the petitioners herein.

Brief facts leading to filing of this petition are that respondent herein filed a Civil Suit No.7A/2004 against the petitioners herein claiming the petitioners to be her tenants in Shop No.3 mentioned in Para-1 of the plaint and also against the other tenants of Shop Nos. 1, 2 & 4 on the ground that all the four shops were sold by Smt. Uma Das through a registered sale deed dated 14.6.1999. The petitioners herein have filed their written statement denying the fact that the shop in question belongs to the respondent herein, she is in possession and the petitioners herein were the tenants of respondent herein. After filing of written statement, the petitioner No.1 herein filed an application under Section 10 of the CPC for staying the further proceedings of the suit on the ground that her mother namely Smt. Uma Das filed a civil suit against the plaintiff/respondent herein for declaration and injunction, which was registered as Civil Suit No.4A/2003, but the same was dismissed by the Additional District Judge on 31.1.2004 and after that judgement the plaintiff/respondent herein has filed the suit for eviction against the

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

40

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

petitioners herein/defendant and other persons, who are in possession of other shops. It has been mentioned in the application that the petitioner No.1 herein, being the daughter of Smt. Uma Das, is in possession of shop in question as the owner and in that shop she is running STD PCO. It has further been mentioned in the application that being aggrieved by the order of dismissal of suit, Smt. Uma Das had preferred an appeal before this Court, which is still pending, therefore, issue involved in both the suits is same and decision of this Court in the previous suit will effect the decision of present suit. However, learned Civil Judge rejected the application vide impugned order on the ground that no document has been filed regarding filing of appeal and also on the ground that earlier suit filed by the mother of defendant No.1/petitioner No.1 herein was for declaration and injunction, whereas the suit in question is for arrears of rent and eviction. Therefore, the issues involved in both the suits are not directly and substantially same.

I have heard learned counsel for the petitioner on admission.

Learned counsel for the petitioner submitted that the decision of appeal going to effect the decision of present suit, therefore, the proceeding of the suit filed by the respondent herein ought to have been stayed by the learned Civil Judge under Section 10 of the CPC.

Provsions of Section 10 of the CPC envisages that "*no court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending*

ये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

41

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

in the same or any other Court in India having jurisdiction to grant the relief claimed."

Now the question is whether the issues involved in the suit filed by Smt. Uma Das-mother of petitioner No.1 herein for declaration and injunction is directly and substantially in issue in the present suit. Earlier suit filed by Smt. Uma Das against the respondent herein was for declaration and injunction in respect of the disputed shop and other shops on the ground that when she sold the property to respondent herein the shops in question were not included in the sale deed and by fraud these shops were included in the said sale deed and this suit was dismissed after full trial. Therefore, the issue involved in this suit was whether the shop in question and other shops were sold by Smt. Uma Das-mother of petitioner herein or not to the respondent herein or whether by committing fraud on the mother of the petitioner No.1 herein these shops were included in the said sale deed. Whereas, in the present suit the issue involved is regarding C.G. Accommodation Control Act, 1961. In this case the trial court is required to look into the facts whether the landlord and tenant relationship is existing between the parties and whether the respondent herein is entitled for eviction decree against the petitioners herein in view of the provisions of Section 12 of the Accommodation Control Act. Therefore, the issues, which are to be decided in the present suit and the issues, which were to be decided in the previous suit, are neither directly nor substantially involved in the eviction suit. Even otherwise, if the mother of petitioner No.1 herein succeeds in the appeal pending

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

42

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

before this Court, then she will be entitled for possession of suit shops and for that purpose the eviction proceedings of this suit cannot be stayed for indefinite period.

Hence, the provisions of Section 10 of the CPC are not attracted in this matter and in my view, the trial Court has not committed any infirmity or illegality in passing the impugned order. As such, writ petition is not maintainable, same is liable to be dismissed and it is accordingly dismissed at the admission stage itself.

Consequently, M.(W.)P. No.2801/05 and I.A. No.6335/05 also dismissed.

Sd/-
L.C. Bhadoo
Judge

(पीछे देखिये)